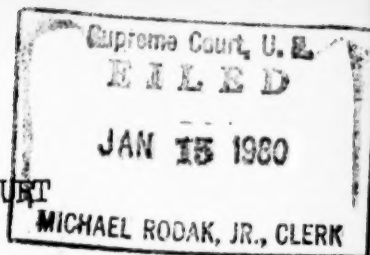


IN THE UNITED STATES SUPREME COURT  
WASHINGTON, D.C.



CASE NO. 79-833

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ROBERT J. KONDRAT  
Petitioner

vs.

CITY OF WILLOUGHBY HILLS, et al.

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PETITIONER'S REPLY BRIEF

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## ARGUMENT

Petitioner is in receipt of Respondents' BRIEF IN OPPOSITION TO CERTIORARI. Petitioner's REPLY BRIEF is in response to Respondents' argument and will clarify inaccuracies presented by Respondents.

1. Respondents have questioned whether the Supreme Court has jurisdiction in a civil case where the petitioner does not present his petition within the time set by the statute. As this court is aware of, a NOTICE OF APPEAL was filed August 9, 1979 in the United States Court of Appeals for the Sixth Circuit, well within the statute, all in accordance with Part IV, page six, of the rules of the Supreme Court of the United States.
2. However, Petitioner was informed that the procedure, as given on page six, was improper for Petitioner's appeal. Consequently, a delay was experienced by exchange of correspondence until the

correct procedure was arrived at. This court has recognized this fact, and at its discretion, and in the interests of justice, has accepted the docket fee and docketed the case.

2. Respondents state (page 5 of Respondents' brief) that "petitioner was indicted in state court on several counts of perjury for allegedly making false statements under oath concerning the procedures he followed in gathering signatures for the petition drive." This is not a true statement. Its a fact that petitioner was indicted on fabricated criminal activity. See State of Ohio vs. Robert J. Kondrat, Case No. 76- CR 473.

3. Respondents state (pages 5 and 6 of Respondents' brief) that "Petitioner was acquitted of the criminal charges at the close of the State's case. Petitioner then brought this action in the U.S. District Court for the Northern District

of Ohio." This is not a true statement. Petitioner brought this action into the U.S. District Court before, not after the State's case.

4. Respondents state (page 11 of Respondents' brief) that E. W. Mastrangelo, as an administrative officer does have a qualified immunity from suit provided he (1) acts in good faith; (2) within the bounds of his authority and; (3) in a manner which does not violate the clearly established constitutional rights of persons with which he deals. The Respondent, the Chairman of the Board of Elections of Lake County, Ohio, cut short the time allotted to the Petitioner's exercise of the First Amendment -- the right to petition the government for a redress of grievances, when the Respondent denied to furnish to the solicitors of signatures, the rules governing the validation of signatures. This

denial, by the Respondent, to furnish the requested rules, shortened the ten day statutory grace period given to amending petitions that were defective or, insufficient or incorrect in form or substance. This Respondent's alleged action which denied the full time allotted to the petitioning process, infringed upon and abridged Petitioner's rights guaranteed by the First Amendment. Respondent's action was not in good faith and did violate the constitutional rights of persons. This public information was deliberately denied so as to cut short the petitioning process period.

5. Respondents state in part (page 9 of Respondents' brief) that "the acts complained of are solely those of individuals." This is an untrue statement. The Complaint throughout alleges City

and County. Individuals are named for the purpose of identifying each community and/or jurisdictions' allegations. The Complaint's Appendix defines the Defendants. They are "City of Willoughby Hills, in the State of Ohio, and County of Lake, in the State of Ohio." Respondents' brief continues, stating "For this reason alone, the Complaint fails to state a claim upon which relief could be granted." This is not true. The Complaint has not failed to state a claim upon which relief could be granted.

6. Respondents' state (page 12 of Respondents' brief) that "failure of the Complaint to state facts which would show or tend to show that plaintiff was denied any constitutionally guaranteed right by operation or application of some city ordinance, custom or usage."

And, that "No such allegation is contained in the Complaint." This is not a true statement. Item 3d, page 2 of the Complaint cites the City of Willoughby Hills Charter, Article 8, Section 8.32, regarding the petitioning process, and the City's infringement and abridgement of Petitioner's right guaranteed by the First Amendment.

7. Respondents' state (page 11 of Respondents' brief) "that prosecutors are immune from liability for actions taken in performance of official litigation duties": Imbler v. Patchman cited. This is not a true statement. The allegations against Lake County did not occur in the performance of official litigation duties. The allegations occurred during the administrative and/or investigative stages. And, the intent of the Imbler doctrine is to provide immunity to prosecutors

who conscientiously and honestly execute their duties even though they may have exercised poor judgement in their decision making processes. The Imbler doctrine does not excuse those prosecutors who purposely abuse the use of their office, or engage in conspiracy.

8. Respondents state (page 12 of Respondents' brief) "that the Court of Appeals, on this issue among others, conducted a searching inquiry from the bench concerning the allegations." Respondents neglected to say that the searching inquiry conducted by the Sixth Circuit Court of Appeals did not address itself to all the questions presented for review. The court restricted itself primarily to irrelevant matter concerning Petitioner's incarceration. The question presented for review was cruel and unusual punishment. The searching inquiry conducted



by the court, which consumed most of the hearing, did not address itself to this question. Instead, the court conducted a searching inquiry into the mechanics leading to the incarceration and not into the conditions after Petitioner's incarceration. This question presented for review was not how the Petitioner came to be jailed, but instead, dealt with the question of the type of treatment received after being jailed. Is incarceration without plumbing and/or light considered as cruel and unusual punishment? The lower court skirted the issue.

9. Respondents state in part, (pages 12 and 13 of Respondents' brief) that Petitioner has since the filing of his Complaint, filed in other courts no less than five separate actions against defendants herein and that these cases rely on the same facts as those pleaded in this

Complaint. These are untrue statements. Actions filed in the civil courts are for false arrest and malicious prosecution and; for libel and slander. The facts pleaded in the civil actions are not the same as pleaded for in the deprivation of constitutional rights in Petitioner's Complaint.

In summation, Respondents have stated that "Petitioner has failed to properly invoke the jurisdiction of this Court and to present special and important reasons for granting a review for Writ of Certiorari." On the contrary, Petitioner has properly invoked the jurisdiction of this Court. This Court has recognized the delay, the cause, and reason and, in the interest of justice, and at its discretion, has accepted the filing of the Petition for Writ of Certiorari.

Also, Petitioner has presented special and important Constitutional issues for a writ of certiorari. (1) Can absolute immunity be granted to officials for actions conducted during the investigative and/or administrative stages? (2) Can absolute immunity be granted to officials such as mayors and Board of Elections head? If so, where does absolute immunity stop? (3) Is a city or county considered as persons and be subject to liability for actions that infringe upon the Constitutional rights of citizens? (4) Is incarceration without plumbing and/or light considered as cruel and unusual punishment? and (5) Can justice be expected to prevail when justice itself is a defendant?

All of the above Constitutional questions are important to each and every American. Although some of the

issues presented for review have already been clearly settled by this Court, the Respondents have reintroduced them for the sake of their defense. Aside from these, there looms one issue of especially significant importance to all. And that issue is: Can justice be expected to prevail when justice itself is a defendant?

#### CONCLUSION

This Court is asked to not recognize the Respondents' request for a denial of Petitioner's Writ of Certiorari because of Respondents' inaccuracies, but more importantly, so that the court may address the questions, and especially the question: Can justice be expected to prevail when justice itself is a defendant?

The judicial handling of the Respondents' alleged injustices has cast a shadow over the integrity of the judiciary. This shadow must be removed. In this case, members of the judiciary

sat in judgement of their colleagues. In each instance, the courts rendered decisions favoring judiciary members. This, despite the fact that overwhelming evidence indicated otherwise.

Through technicalities, irrelevant questions and a turned cheek to the facts, the judiciary arrived at its decisions, in a case in which the Petitioner had no legal training; was deprived of adequate legal counsel because of the Respondents' positions and; was denied readily access to the legal profession's law libraries.

This case is one of modern day tyranny in which, the alleged injustices were committed by Respondents of the legal/ judicial/political sphere. Because of the Respondents' positions and/or profession, the Respondents were accorded a standard of justice which was totally different from that accorded the Petitioner -- but who nevertheless is entitled to the same degree of consideration for justice as given the Respondents.

In this important case of Constitutional issues, the judiciary in the lower courts have displayed a discriminatory posture of protection for its own. No one person in this land should be required to cope with these insurmountable odds in quest of justice. The discriminatory position of the legal/judicial/political faction against all others rivals that of the black/white segregation era. The barriers between the colors which had split this nation for so many years, was finally thrust aside by this court in 1954. Today, there is another barrier. One that separates the justice seekers from the justice makers. Unless this barrier is confronted and removed by this court, then this integration, a requirement for honest and compatible justice cannot be achieved. Justice will then become nothing but a byword, void of any useful purpose, except to selected few. These are what dictatorships are made of.



Respectfully submitted,

  
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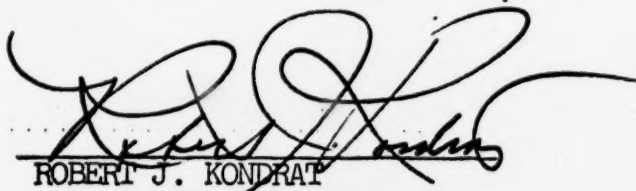
SERVICE

A copy of the foregoing PETITIONER'S REPLY  
BRIEF was mailed by regular United States mail,  
first class postage prepaid, on this 14th day  
of January, 1980, to the following:

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